

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
1 THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947
(302) 856-5257

November 4, 2011

Timothy Stewart
16413 Fairview Circle
Lewes, Delaware 19958

Craig A. Karsnitz, Esquire
Young Conaway Stargatt & Taylor,
LLP
110 West Pine Street
P.O. Box 594
Georgetown, Delaware 19947

Re: *Stewart v. King's Creek Country Club*;
C.A. No. S11A-03-002

On Appeal from the Unemployment Insurance Appeal Board: **AFFIRMED**

Date Submitted: October 14, 2011
Date Decided: November 4, 2011

Dear Mr. Stewart and Counsel:

Timothy Stewart appeals the decision of the Unemployment Insurance Appeal Board (“the Board”) to dismiss Mr. Stewart’s appeal from an Appeals Referee’s determination that Mr. Stewart had been discharged from his place of employment for just cause in connection with his employment. The Board’s decision is affirmed for the reasons stated below.

Nature and Stage of the Proceedings

Mr. Stewart worked for King’s Creek Country Club (“King’s Creek”) performing golf course maintenance from May 2009 until September 30, 2010. On September 28, 2010, Mr.

Stewart fell off a piece of equipment while maintaining the golf course and injured his foot. Another employee transported Mr. Stewart to the main office, where a representative of King's Creek opened a worker's compensation claim on Mr. Stewart's behalf. The Controller of King's Creek, Georgeanne Ziegler, instructed Mr. Stewart to go to the hospital to have his foot x-rayed and submit to a drug test. Ms. Ziegler told Mr. Stewart he could not return to work until he had done as directed. Ms. Ziegler also relayed these instructions to Mr. Stewart's mother when she arrived to pick up Mr. Stewart from King's Creek. Mr. Stewart did not report to the hospital. On September 30, 2010, Mr. Stewart called his superior, the golf course superintendent, Jim Prucnal, and asked if he could return to work. Upon learning that Mr. Stewart had not, in fact, reported to the hospital for treatment as directed, Mr. Prucnal terminated Mr. Stewart's employment.

A Claims Deputy found Mr. Stewart was disqualified for unemployment benefits because he was terminated for just cause associated with his employment. An Appeals Referee reversed this decision after a hearing at which King's Creek did not appear. The Board subsequently accepted King's Creek's excuse for not attending the hearing and remanded the matter to the Appeals Referee. Accordingly, the Appeals Referee held another evidentiary hearing on January 10, 2011. After hearing evidence from both parties, the Appeals Referee affirmed the decision of the Claims Deputy by way of written decision mailed January 13, 2011. Mr. Stewart filed a timely appeal of the Appeals Referee's decision to the Board. The Board scheduled a hearing for March 2, 2011. The parties were duly notified thereof. However,

neither party appeared for the hearing. The Board subsequently dismissed the appeal after a diligent search of the premises revealed Mr. Stewart had not appeared to prosecute his appeal. Mr. Stewart now appeals that decision to this Court.

Discussion

When reviewing the decisions of the Board, this Court must determine whether the Board's findings and conclusions of law are free from legal error and are supported by substantial evidence in the record.¹ "Substantial evidence" is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."² The Court's review is limited: "It is not the appellate court's role to weigh the evidence, determine credibility questions or make its own factual findings, but merely to decide if the evidence is legally adequate to support the agency's factual findings."³

Section 3314 of Title 19 of the Delaware Code provides, in pertinent part, that one shall be disqualified for unemployment benefits if he has been "discharged from [his] work for just cause in connection with [his] work."⁴ "Generally, the term 'just cause' refers to a wilful or

¹ *Unemployment Ins. Appeal Bd. v. Martin*, 431 A.2d 1265 (Del. 1981); *Pochvatilla v. U.S. Postal Serv.*, 1997 WL 524062 (Del. Super.); 19 Del. C. § 3323(a) ("In any judicial proceeding under this section, the findings of the [Board] as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the Court shall be confined to questions of law.").

² *Gorrell v. Division of Vocational Rehab.*, 1996 WL 453356, at *2 (Del. Super.).

³ *McManus v. Christiana Serv. Co.*, 1197 WL 127953, at *1 (Del. Super.).

⁴ 19 Del. C. § 3314(2).

wanton act in violation of either the employer's interest, or of the employee's duties, or of the employee's expected standard of conduct."⁵ Where a decision to terminate an employee is based upon misconduct, the employer has the burden of establishing the misconduct.⁶

On appeal, Mr. Stewart attempts to revisit the facts surrounding the incident on September 28, 2010. Not only is it inappropriate for the reviewing court to engage in fact-finding, the Court disposes of Mr. Stewart's appeal for procedural reasons.

⁵ *Abex Corp. v. Todd*, 235 A.2d 271, 272 (Del. Super. 1967).

⁶ *McCoy v. Occidental Chem. Corp.*, 1996 WL 111126, at *3 (Del. Super. Feb. 7, 1996).

Section 3322 of Title 19 of the Delaware Code provides, “[J]udicial review [of a Board decision] ... shall be permitted only after any party claiming to be aggrieved thereby has exhausted all administrative remedies as provided by this chapter.”⁷ This Court is without jurisdiction to hear the merits of a case where a party has not exhausted his administrative remedies because he failed to appear at a Board hearing that he requested.⁸ Because Mr. Stewart does not appeal the Board’s exercise of discretion in dismissing his appeal thereto, there is no issue properly before the Court at this time.

Conclusion

In light of the foregoing, the Board’s dismissal of Mr. Stewart’s appeal from the Appeals Referee’s decision is AFFIRMED.

IT IS SO ORDERED.

Very truly yours,

/s/ T. Henley Graves

cc: Prothonotary

⁷ 19 Del. C. § 3322(a).

⁸ *Jackson v. Murphy Marine Servs., Inc.*, 2002 WL 1288791, at *1 (Del. Super.); compare *Filanowski v. Port Contractors, Inc.*, 2007 WL 64758 (Del. Super.) (finding the appeal not procedurally barred because (a) the party who failed to appear at the Board hearing was not the party aggrieved by the Appeals Referee’s decision and (b) the Board did not dismiss the appeal but heard evidence and decided the matter on the merits).

cc: Unemployment Insurance Appeal Board